

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIRGINIA MUNIZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

No. 18-CV-8295 (KMK)(PED)

ORDER ADOPTING
REPORT & RECOMMENDATION

KENNETH M. KARAS, United States District Judge:

Plaintiff Virginia Muniz (“Plaintiff”) filed applications for Disability Insurance Benefits and Supplemental Income on April 22, 2015, alleging that she had been disabled beginning March 5, 2014. After her claim was administratively denied, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). On July 25, 2017, a hearing was held before ALJ Thomas Sanzi. ALJ Sanzi issued a written decision on January 19, 2018 where he found that Plaintiff was not disabled within the meaning of the Social Security Act. The ALJ’s decision became the Commissioner’s final decision on July 11, 2018, when the Appeals Council denied Plaintiff’s request for review.

On July 16, 2018, Plaintiff retained attorney Daniel Berger to challenge the Commissioner’s final decision in the United States District Court for the Southern District of New York. Plaintiff engaged Mr. Berger on a contingency fee basis and agreed to pay him up to 25% of any award of past-due benefits. On September 12, 2018, Plaintiff filed a Complaint in this Court pursuant to 42 U.S.C. § 405(g). (Dkt. No. 1.) On April 8, 2019, Plaintiff filed a Motion for Judgment on the Pleadings. (Dkt. No. 13.) By Stipulation and Order dated August 2, 2019, Plaintiff’s motion was granted and the matter was remanded to the Commissioner for further administrative proceedings. (Dkt. No. 16.) On October 16, 2019, the Court ordered a

stipulation between the parties awarding Plaintiff attorney's fees and expenses in the amount of \$5,300.00 pursuant to the Equal Access to Justice Act ("EAJA"), 42 U.S.C. § 2412. (Dkt. No. 19.) Following remand, the Appeals Council issued a decision finding Plaintiff disabled since December 22, 2015. By Notice of Award dated October 29, 2020, the Social Security Administration advised Plaintiff that she was entitled to monthly disability benefits of \$681.00 as of June 2016. Plaintiff began to receive monthly benefits as of November 2020 and past-due benefits of \$136,778.40. The Social Security Administration withheld \$34,194.60, which is 25% of Plaintiff's past due benefits to pay a potential request for attorney's fees under 42 U.S.C. § 406(b). (Dkt. 21.)

Plaintiff now seeks an award of attorney's fees equal to the total amount withheld. The case was referred to the Honorable Paul E. Davison ("Judge Davison"). (Dkt. No. 24.) On December 15, 2020, Judge Davison issued a Report and Recommendation ("R&R") recommending that this Court grant the Plaintiff's Motion for Attorney's Fees. (Dkt. No. 26.) Judge Davison also recommended that counsel for Plaintiff be directed to refund the previously awarded \$5,300.00 in attorney's fees, under the EAJA, directly to Plaintiff. Defendant has not filed any objections to the R&R.¹

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010); *Eisenberg v. New Eng. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed

¹ Judge Davison provided notice that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, objections to the R&R were due within fourteen days from the receipt of the R&R and that failure to file timely objections would preclude later appellate review of any order of judgment that will be entered. (R&R 9.)

the R&R and the Motion for Attorney's Fees, and finding no substantive error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the Report and Recommendation, dated December 15, 2020, is ADOPTED in its entirety.

ORDERED that Plaintiff's Motion for Attorney's Fee is GRANTED.

ORDERED that counsel for Plaintiff be directed to refund the previously awarded \$5,300.00 in attorney's fees, under the EAJA, directly to Plaintiff.

ORDERED that the Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: January 28, 2021
White Plains, New York

A handwritten signature in black ink, appearing to read 'K. Karas', written over a horizontal line.

KENNETH M. KARAS
United States District Judge